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By E-MAIL

William H. Pauley, III, U.S. District Judge,
U.S. District Court, S.D.N.Y.,
500 Pearl Street,
New York, New York 10007-1312.

Dear Hon. Judge Pauley :

Re : U.S.A. v. NYCHA (18-CV-5213) (WHP)

I am an activist-reporter for Progress New York, and I have been writing for years about political corruption and about public housing in New York City. I have written articles about the maintenance logs obtained from the New York City Housing Authority, or NYCHA. The maintenance logs were obtained under the State's Freedom of Information Law, or FOIL, and this information identified, amongst other conditions, which public housing developments tested highest for the presence of lead in drinking water, a subject that has largely gone over-looked in the discussion about NYCHA.^{1/} Using NYCHA's maintenance logs, I also raised questions about how a report published by *The New York Daily News* about lead paint inspection and abatement did not match up to NYCHA's First FOIL Response.^{2/} Relying on FOIL data provided to me by NYCHA,

^{1/} See Louis Flores, *NYCHA FOIL response identifies developments that tested positive for lead in water*, Progress Queens (6 June 2016), <https://www.progressqueens.com/news/2016/6/3/nycha-foil-response-identifies-developments-that-tested-positive-for-lead-in-water>.

^{2/} See Louis Flores, *A Python review of NYCHA data raises new questions about the authority's tracking of lead*, Progress Queens (27 June 2016), <https://www.progressqueens.com/news/2016/6/27/a-python-review-of-a-nycha-csv-data-file-raises-new-questions-about-lead-tracking> (noting that, "According to the review of lead paint inspections and abatement records performed by *The New York Daily News*, NYCHA tenants made only 44 requests for lead paint inspection and abatement for the period of time applicable to its review of records. ¶ When Progress Queens applied a search filter to the service requests for descriptions that were expressly labeled as being lead-related, only 25

I also published a report about the diverging trends in complaints about mold and mildew.^{3/} From the FOIL data provided by NYCHA, I published numerous, other reports. I have also published a report, identifying a steady incremental rise in the presence of lead in New York City drinking water, and I relied, in part, on a NYCHA study of its drinking water for my reporting.^{4/} My reporting about possible causes for the upward trend in lead in drinking water has been thwarted by my inability to obtain additional records from another Municipal Agency under FOIL.^{5/} Therefore, I have a strong interest in the outcome of this case. To people with knowledge of the sensibility that informed the creation of NYCHA, the case before this Court represents an opportunity to save public housing in New York City. To powerful interests, however, this case alternatively represents an opportunity to corruptly undermine and trigger the privatisation of public housing. The Court is presently reviewing a proposed settlement, or Consent Decree, offered by the U.S. Attorney's Office. (Dkt. No. 5-1). I respectfully ask that the Court consider these following, relevant, additional information or arguments before accepting or approving the settlement.

Policy. The U.S. Attorney's Office, counsel for the Plaintiff, cited in the Complaint sections from U.S. Housing Act of 1937 (the "U.S. Housing Act"), 42 U.S.C. §§ 1437. (Dkt. No. 1 at 6, 35, 63, 67, etc.). According to the declaration of policy of the U.S. Housing Act, it is the "policy of the United States" ... to, in part, "assist States and political subdivisions of States to address the shortage of housing affordable to low-income families." 42 U.S.C. §§ 1437(a)(1)(B). NYCHA was created in 1934, and, thus, its

records were returned for the corresponding period of 01 January 2013 through 30 March 2015, indicating that either NYCHA was not accurately describing service requests that were lead-related in its service request database, that the service request CSV file provided to Progress Queens was incomplete, or that NYCHA was using another system to track lead-related service requests or work orders.").

^{3/} See Louis Flores, *Further Python analysis of NYCHA FOIL records reveals diverging trends in mold, mildew*, Progress Queens (30 June 2017), <https://www.progressqueens.com/news/2016/6/30/further-python-analysis-of-nycha-foil-records-reveals-diverging-trends-in-mold-mildew> (where it appeared suspicious to me that complaints about mold, which bear a harsher connotation, were decreasing, whereas complaints classified as being about mildew, which bear a milder connotation, were increasing).

^{4/} See Louis Flores, *NYC water tests from the last four years show increased levels of lead that exceed 15 ppb*, Progress Queens (30 Sept 2016), <https://www.progressqueens.com/news/2016/9/25/nyc-water-tests-from-the-last-four-years-show-increased-rates-of-results-that-exceed-15-ppb>.

^{5/} See Louis Flores, *Department of Environmental Protection closes FOIL Request with partial response about Lead and Copper Rule tests*, Progress Queens (31 Aug 2017), <https://www.progressqueens.com/news/2017/8/31/departement-of-environmental-protection-makes-partial-foil-response-about-lead-and-copper-rule-tests>.

creation obviously informed the drafting and passage of the U.S. Housing Act. NYCHA was created during the early years of the Great Depression. In the time leading up to the creation of NYCHA, a great public debate engulfed New York City about housing being made accessible as a social good. According to a 1934 article in *The New York Times*, public opinion regarded the provision of housing as a public sector duty. "More than 800 delegates, claiming to represent 750,000 workers, at a meeting last night at Washington Irving High School enthusiastically endorsed a resolution calling on the city and State to recognize housing construction and maintenance as a 'public enterprise' in the same category as transportation and education."^{6/} NYCHA was created against a backdrop of a complete market failure, at that time then, to develop decent and safe dwellings for low-income individuals and families.

The Unaffordability Crisis in New York City Today. We are experiencing an economic crisis in New York City, where individuals and families earning low- and middle-incomes are increasingly unable to afford residential rents.^{7/} One year after a study concluded that a majority of New Yorkers were so rent-burdened that they were one paycheck away from becoming homeless, another study concluded that several of the most-rent-burdened neighborhoods had seen miniscule development of affordable housing.^{8/} The few affordable-housing units being constructed by the administration of Mayor Bill de Blasio (D-New York City) have not been really affordable to those most in need of affordable housing. Given the high incomes required to rent newly-constructed apartments, "The overarching question that many have asked about [Mayor] de Blasio's larger affordable housing plan, including the housing to be built in rezoned neighborhoods, has been '*Affordable for whom?*' " (emphasis added)^{9/} We are again experiencing a complete market failure to develop decent and safe dwellings for low-income individuals and families.

^{6/} See *PUBLIC HOUSING ASKED BY WORKERS; Social Control Just as in Education Is Endorsed at Meeting of 80 Delegates. MAYOR AND POST FAVOR IT LaGuardia Tells Labor Council Federal Money Will Only Begin to Meet City's Needs.*, *The New York Times* (29 June 1934), <https://www.nytimes.com/1934/06/29/archives/public-housing-asked-by-workers-social-control-just-as-in-education.html>.

^{7/} See Louis Flores, *58 per cent. of New Yorkers are one paycheck away from becoming homeless : Study*, *Progress Queens* (30 Nov 2016), <https://www.progressqueens.com/news/2016/11/29/58-percent-of-new-yorkers-one-paycheck-away-from-becoming-homeless>.

^{8/} See Joe Anuta, *Neighborhoods in greatest need of affordable-housing development have seen little of it*, *Crain's New York Business* (11 Aug 2017), http://www.crainsnewyork.com/article/20170811/REAL_ESTATE/170819974/the-most-rent-burdened-areas-of-new-york-not-getting-any-affordable-housing-housing-developments.

^{9/} See Sam Rasking, *Questions Arise as De Blasio Rezones Series of Low-Income Neighborhoods*, *The Gotham Gazette* (7 Mar 2018), <http://www.gothamgazette.com/city/7521-questions-arise-as-de-blasio-rezones-series-of-low-income-neighborhoods>.

Why Is This Litigation Before This Court ? Land use policy and laws in the City and the State of New York are largely set by wealthy real estate developers and their lobbyists. At a 2015 speech given at New York Law School, former U.S. Attorney Preet Bharara made clear that New York State legislators are responsible for how much New Yorkers pay in rent -- and that the corrupting role of money in politics may influence how much New Yorkers pay in rent.^{10/} Certain actors in the real estate industry are generally considered the largest campaign contributors in New York political campaigns.^{11/} Against this backdrop, the only *political solutions*, which are subjected to the influence of real estate industry, that Mayor de Blasio, former NYCHA CEO Shola Olatoye, and New York City Councilmember Ritchie Torres (D-Fordham) -- the latter being the former chair of the City Council public housing committee -- have offered are the privatisation of NYCHA under the infill plan (involving the sale or lease of gardens, playgrounds, or parking lots in public housing developments)^{12/} and a neoliberal program known as the Rental Assistance Demonstration program,^{13/} or RAD. As this Court knows from its experience in the mass tort case over toxic mold in NYCHA housing developments, this Court has become the *de facto* custodian of NYCHA for the precise reason that elected officials with powers of the purse refuse to fully fund NYCHA so that the authority can make necessary capital repairs to its public housing developments. Instead, public officials from Mayor de Blasio,^{14/} to Councilmember Torres,^{15/} to Gov. Andrew Cuomo (D-New York)^{16/} are involved in a public relations

^{10/} See Preet Bharara, *Complete Video from the 118th CityLaw Breakfast with Preet Bharara*, New York Law School (23 Jan 2015), <https://www.citylandnyc.org/video-citylaw-preet-bharara/>.

^{11/} See Bill Mahoney, *REBNY members gave a tenth of all N.Y. campaign money*, POLITICO New York (15 Apr 2015), <https://www.politico.com/states/new-york/albany/story/2015/04/rebny-members-gave-a-tenth-of-all-ny-campaign-money-021345>.

^{12/} See Will Bredderman, *Plan to Develop NYCHA Land 'Moving Forward'—With or Without Resident Support*, The New York Observer (27 Jan 2016), <https://observer.com/2016/01/plan-to-develop-nycha-land-moving-forward-with-or-without-resident-support/>.

^{13/} See Sally Goldenberg, *At \$31.8B, NYCHA's unmet capital needs dwarf government allocations*, POLITICO New York (2 July 2018), <https://www.politico.com/states/new-york/city-hall/story/2018/07/01/at-318b-nychas-unmet-capital-needs-dwarf-government-allocations-495925>.

^{14/} See Rich Calder, *De Blasio blasts Cuomo over visit to NYCHA building*, The New York Post (21 Mar 2018), <https://nypost.com/2018/03/21/de-blasio-blasts-cuomo-over-visit-to-nycha-building/>.

^{15/} See Anna Sanders, *Councilman slams de Blasio for trying to settle NYCHA probe*, The New York Post (26 May 2018), <https://nypost.com/2018/05/26/councilman-slams-de-blasio-for-trying-to-settle-nycha-probe/>.

blame game, in the process leaving NYCHA at risk for privatisation -- in direct violation of the very policy and public opinion that informed the creation of NYCHA and passage of the U.S. Housing Act. This case is before this Court, because it can be argued that political actors want to see NYCHA privatised to benefit their real estate supporters, something this Court must not allow to happen.

The Role of Money in Politics. According to information obtained by Progress New York, the Internal Revenue Service may be investigating the first RAD sale carried out by the de Blasio administration. A report published by Progress Queens, the precursor to Progress New York, noted that a cash-strapped NYCHA may have sold buildings that had been refurbished into a consortium that included large real estate developers with close political ties to Mayor de Blasio.^{17/} This sale, carried out under the RAD program, sold 900 apartments in the Section 8 program in gentrified or gentrifying neighborhoods. It is not yet known to me the basis on which the Internal Revenue Service may be investigating the sale. According to one source relied upon for the Progress Queens report, a lawyer with expertise in City legislation, Section 197-c of the City Charter requires that any disposition of City real property must be made through the ULURP process, something that did not happen for that sale to the consortium. Because of my relentless reporting about real estate corruption in New York, I know that the U.S. Attorney's Office does not seek in Federal corruption investigations the forfeiture of City real property that is corruptly negotiated by the private sector.^{18/} If this Court accepts the proposed settlement and the woefully inadequate repair fund proposed in the Consent Decree, NYCHA will be left in a state that will permit political actors subject to the influence of the real estate industry to continue the planned privatisation of NYCHA through the infill plan and the RAD program, even if the transactions may involve fraud or criminality. Given the Court's experiences in the mass tort litigation in the mold abatement case, this Court knows that unless NYCHA is fully funded, it will never meet any Orders entered by this Court to ensure the habitability of public housing developments in New York City.

^{16/} See Nick Fugallo and Nolan Hicks, *Cuomo says God will judge de Blasio on NYCHA scandal*, The New York Post (22 July 2018), <https://nypost.com/2018/07/22/cuomo-says-god-will-judge-de-blasio-on-nycha-scandal/>.

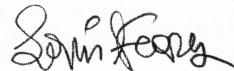
^{17/} See Louis Flores, *Cash-strapped NYCHA sold apartment buildings that had been recently refurbished*, Progress Queens (4 Mar 2015), <https://www.progressqueens.com/news/2015/3/4/cash-strapped-nycha-sold-apartment-buildings-that-had-recently-been-refurbished>.

^{18/} See Louis Flores, *Past New York City Federal investigation left corruptly-negotiated real estate contracts intact*, Progress Queens (11 May 2016), <https://www.progressqueens.com/news/2016/5/11/past-federal-investigation-left-corruptly-negotiated-real-estate-contracts-intact>.

Recommendations. If NYCHA is going to be saved, the Court must do two things. First, the Court must reject the repair fund proposed in the Consent Decree as being woefully insufficient. *See* Exhibit A to Consent Decree. (Dkt. No. 5-1 at 29). The U.S. Attorney's Office is only proposing a repair fund of \$4 billion when in actuality NYCHA's capital improvement budget is now estimated in excess of \$31 billion. This Court must demand that the United States, the State of New York, and the City of New York allocate amounts to create a repair fund that satisfies all of NYCHA's capital improvement budget needs. Only a *political decision*, which would allow politicians to escape accountability for failing NYCHA, would stop short of demanding a full funding of NYCHA's capital improvement budget. Since this Court is beyond engaging in any political considerations, the course is clear : This Court must demand a full funding of NYCHA's capital improvement budget needs. The policy set forth in the U.S. Housing Act and the public opinion that informed the creation of NYCHA also act as guideposts for this Court, namely, since the market is incapable of creating affordable housing for individuals and families earning low incomes, this Court must save NYCHA, because saving NYCHA is in the interest of promoting the general welfare of the Nation. Second, the Court must remove the entire Board of Directors, who have not accepted responsibility for never having held any of the authority executives or elected officials to account for their abject failure to oversee NYCHA during its financial and physical condition standards crises. I won't document the many ways that the Board of Directors have failed NYCHA and their tenants. Instead, I refer the Court to information submitted by the U.S. Attorney's Office. (Dkt. No. 1, ¶ 218). The only acceptable replacements should be those acceptable to the Court. This Court has jurisdiction over NYCHA the same way that Federal Courts have had to intervene in recent years in the management of the Fire Department of the City of New York, the Police Department of the City of New York, the New York City Department of Correction, and the New York City Department of Environmental Protection.

For the reasons and arguments stated above, the Court must demand a full funding of NYCHA's capital improvement budget and the removal of the Board of Directors. Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Louis Flores", written in a cursive style.

Louis Flores